

**DATE:** November 12, 2010

**MEMO CODE:** SP 09-2011; TA 02-2011

**SUBJECT:** Clarification of Competitive Foods and Foods of Minimal Nutritional Value

**TO:** Child Nutrition Programs

This memo is in response to several questions that the Department of Agriculture (USDA) Food and Nutrition Service (FNS) has received from Regions, States, program operators and industry regarding the definitions of “competitive foods” and “foods of minimal nutritional value.”

A “competitive food” is defined by 7 CFR 210.11 and 220.12 as any food item that is sold in competition to the reimbursable school meal. A “food of minimal nutritional value” is a food that fits into specific categories defined in the Competitive Food Services regulation also known as “foods of minimal nutritional value.” This regulation, 7 CFR Parts 210.11, and 220.12, along with Appendix B to Parts 210 and 220, requires that “State agencies and school food authorities **prohibit** the sale of foods of minimal nutritional value in food service areas during meal periods.” The term “food service areas” is anywhere school meals are being served or consumed, including classrooms and multipurpose rooms that double as cafeterias during meal periods.

The categories of “foods of minimal nutritional value” listed in this regulation include: 1) Soda Water 2) Water Ices 3) Chewing Gum and 4) Certain Candies – (i) Hard Candy, (ii) Jellies and Gums, (iii) Marshmallow Candies, (iv) Fondant, (v) Licorice, (vi) Spun Candy, and (vii) Candy Coated Popcorn. Foods in these categories are foods of minimal nutritional value unless the specific food item has been exempted from the category by the FNS national office.

If a food that is classified into one of these categories receives an FNS exemption, then this food is considered a “competitive food.” This means that the exempted food can then be sold in competition to the school meal as an *a la carte* item. It is important to emphasize that “foods of minimal nutritional value” that have received an exemption can **only** serve the function of an *a la carte* item to be sold in competition to the school meal.

If a food item from any one of the four categories of “foods of minimal nutritional value” does not have an exemption, then the product **cannot** be sold in food service areas during meal periods. For example, **all** carbonated and aerated beverages are categorized as “Soda Water.” Therefore, all beverages that bubble and fizz are foods of minimal nutritional value that **cannot** be sold in food service areas during meal periods. However, if the carbonated or aerated beverage manufacturer has received a letter from FNS exempting the beverage from the “Soda Water” category of “foods of minimal nutritional value,” then the beverage can be sold *a la carte* as a competitive food. Please refer to TA 06-2008, issued on September 15, 2008, for technical assistance regarding carbonated and aerated beverages.

The list of products included in the *Exemptions Under the Competitive Food Services Regulation* **does not constitute an approval or endorsement by USDA**. Exempted products do not fit the typical and customary function of a healthy meal component and **shall not** be served as part of the reimbursable meal. Foods served as part of the reimbursable meal shall be wholesome and easily recognized by children as part of a food group that contributes to a healthy diet.

Please refer to memo code: TA 01-2011 issued, on October 22, 2010, for more information regarding “foods of minimal nutritional value” or the current list of exempted products from the Competitive Food Services regulation and Appendix B to Parts 210 and 220 (foods of minimal nutritional value).

State and local wellness policies and/or laws may further restrict these Competitive Food Services regulations provided they do not permit foods that are otherwise prohibited by the FNS policy.